

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,038

)

Appeal of )

)

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying her request for a waiver from cooperating with obtaining child support from her husband.

FINDINGS OF FACT

1. The petitioner is the mother of eight children, although only six are currently living with her. She receives ANFC for those six children. The three oldest children are from one father who is paying child support. The three youngest children are the offspring of her current estranged husband who pays no child support.
  2. On May 12, 1994, the petitioner filed a form requesting a waiver from cooperation with DSW and OCSE for the pursuit of child support based on her belief that serious emotional harm would occur to her children and herself if she did so. In a supporting statement, she made vague allusions to her husband's psychological problems and their effect on her and her children. She also talked of a battle over a restraining order which occurred in 1993.
  3. No medical records, shelter records or police or court reports were provided with the application.
- The petitioner's documentation of her allegations consisted of a letter written to the petitioner by her husband and a page purporting to be an entry from his journal. Nothing in those documents would support the allegations made by the petitioner with regard to her husband's psychological state or perceived threat to her family. The petitioner also submitted documents showing that she had been psychiatrically hospitalized in June and July of 1993, but those records do not indicate that the petitioner was hospitalized due to abuse by her husband.
4. The petitioner's application was reviewed by a representative of the Commissioner and denied

because of a failure to provide sufficient evidence to support the claim. The petitioner appealed.

5. The petitioner testified at hearing that she and her children went to a battered women's shelter in May of 1993, but she could provide no documentation of that fact. She was vague as to why she went there, saying only that her husband would not leave her alone. At the end of May, 1993, her husband obtained a restraining order from the family court which prevented her from seeing her children. She did not produce the document but claimed that it was all based on lies told to the Court by her husband. In June and July of 1993, she was hospitalized on a locked psychiatric ward, she says, to have the doctors document that she was not dangerous to her children. At the end of July, 1993, she resumed living with her husband in order to get the restraining order lifted. In January or February of 1994, she was able to leave her rural home, where she claimed her husband had isolated her and kept her from having friends, and get her own apartment where she moved with her children. She and her husband have been informally separated since that time. The last time her husband visited her apartment was March 1, 1994. She has spent considerable time and effort keeping him away from herself and the children. She fears that if he is required to pay child support he will be emboldened to try to spend more time with his children.

6. The petitioner's testimony, though honestly given, is clearly her impassioned view of a complex situation. It is difficult to tell which parts are accurate. However, even if everything she said is taken as truth, there is not sufficient evidence from which it could be concluded that either the petitioner or her children are likely to suffer serious emotional harm if the petitioner is required to cooperate in the establishment and collection of child support from her husband.

### ORDER

The decision of the Department is affirmed.

### REASONS

Any person who receives ANFC automatically assigns his/her rights to support to the Department and is expected as a condition of eligibility to cooperate in establishing paternity and collecting child support benefits unless s/he has good cause for failing to do so. W.A.M. § 2331.32.

Good cause is defined in the Department's regulations, in pertinent part, as follows:

To show that cooperation may be against the best interests of the child the applicant or recipient must produce some evidence that cooperation in establishing paternity or securing support is reasonably anticipated to result in any one of the following:

1. Serious physical or emotional harm to the child for whom support is being sought.
2. Physical or emotional harm to the recipient parent or caretaker which is so serious it reduces her/her ability to care for the child adequately.

NOTE: Physical or emotional harm must be of a serious nature in order to justify a finding of good cause.

...

#### W.A.M. § 2331.33

These regulations closely track those found in the federal regulations at 45 C.F.R. § 232.42. A determination of reasonable anticipation of harm is a factual decision which must be made on "a case by case basis on the weight, sufficiency and quality of the gathered evidence. The final decision requires a subjective judgement on the part of the hearing examiner." Bootes v. Cmmr. of Penn. Dept. of Public Welfare, 439 A.2d 883, 885 (1982).

When the criteria for this exception were adopted by the Department of Health and Human Services, (at that time known as the Department of Health, Education and Welfare), it was expected that it would be an exception used in those few extraordinary circumstances where the parent or child faced a risk so real that it would outweigh the emotional, physical and financial benefits of the child's receiving parental support. See 43 Fed. Reg. 2176, January 16, 1978.

In discussing the evidence necessary to support a request for waiver, the Department's regulation includes the following:

Whenever the waiver request is based in whole or in part upon the anticipation of emotional harm to the child, the recipient parent or the caretaker, the present emotional state and health history of the individual subject to emotional harm must be considered as well as the extent of involvement of the child in the establishment of paternity or support enforcement activity to be undertaken. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

#### W.A.M. § 2331.34(2)

The petitioner's evidence, consisting for the most part of her own testimony, was not sufficient to draw any conclusions about either the emotional state and health history of herself or her children or the extent and nature of any impact she or her children might suffer from cooperating in obtaining child support from her husband. As the petitioner has failed to show that serious emotional harm is reasonably anticipated from cooperation in securing support from her husband, her request for a waiver was properly denied.